

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.664 OF 2014

1. Birendrasingh s/o Ashasingh Bungai,
Age 48 years, Occ. Government Srevicce
as Police Constable (Bakkal No.661)
Police Head Quarter, Nanded
Taluka and District Nanded
R/o Shahidpura, Nanded, Taluka
and District Nanded.
 2. Tehalsingh s/o Gurmukhsingh Nirmale,
Age 60 years, Occ. Retired Government
Servant (as Police Inspector),
R/o Bhagatsingh Road, Nanded
Taluka and District Nanded.
- ... APPLICANTS
(Orig.Accused No.1 & 2)

VERSUS

1. The State of Maharashtra
through the Assistant Police
Inspector, Vazirabad Police
Station, Nanded, Taluka and
District Nanded.
 2. Nana s/o Dipak Linge,
Age 28 years, Occ. Government
Service as Police Sub Inspector
Vazirabad Police Station,
Nanded.
 3. The Police Inspector,
Vazirabad Police Station, Nanded
Taluka and District Nanded
- ... RESPONDENTS
(No.2 Orig. Complainant)

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Shri R.S. Deshmukh, Advocate for applicants
Shri V.D. Godbharle, A.P.P. for respondent No.1/State

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CORAM: S.S. SHINDE AND
 A.I.S. CHEEMA, JJ.

DATED: 12th August, 2015.

Date of reserving order : 07/08/2015

Date of pronouncing order : 12/08/2015

PER COURT :

1. We have heard this application finally. The learned counsel for the applicants – original accused Nos.1 and 2 submits that the application has been filed to quash F.I.R. N.81/2013, dated 4.11.2013, registered at Vazirabad Police Station, Nanded. According to the counsel, the police arrested the applicants on the basis that they had joined the procession of Sachkhand Gurudwara Dipmala Mohalla (Halla Bol) carrying rifles. When the procession was passing from Dena Bank Square towards Mahaveer Square at Nanded. According the counsel, the F.I.R. filed invoking Section 37(1) (3) of the Bombay Police Act, 1951 deserves to be quashed. Reason given is that, it cannot be said that the accused persons were carrying rifles without licence as the accused have produced copies of their licences on record which were valid on the date of incident dated 4.11.2013. The counsel referred to Annexure D, the notification under Section 37(1)

(3) of the Bombay Police Act to submit that although there was notification prohibiting assembling of 5 or more persons, the same did not apply to religious procession. According to the counsel, Annexure E shows that the Police Inspector of Vazirabad, Nanded Police Station had given permission to the Sachkhand Gurudwara Board for the religious procession and thus, according to the counsel, the applicants could not have been proceeded against for carrying of the rifles. Relying on additional affidavit filed by the applicant No.1, it is submitted that, in the said procession, which is annual event, Sikhs participated holding swords and guns in their hands.

2. The counsel argued that, although prohibitory notification under section 37 of the Bombay Police Act was in force, there was permission for the Halla Bol religious procession and as the applicants have licence, F.I.R. could not have been registered against them.

3. Against this, the learned A.P.P. submitted that the notification Annexure D referred to various religious festivals, which were coming up and for the date 4.11.2013, it was mentioned in the notification that it was day of Diwali Padva

and in order to avoid law and order problem, the notification was issued prohibiting assembly of 5 or more persons and prohibiting carrying of instruments like swords, guns etc. The learned A.P.P. submitted that, although the notification did not apply to the religious procession, it did not mean that for such procession permission to carry arms was being given. The permission given to Sachkhand Gurudwara vide Annexure E did not give any specific permission to carry arms. The A.P.P. submitted that, para 7 of the Annexure E itself made it clear that in the procession dangerous arms could not be used. It has been further submitted by the learned A.P.P. that the applicants cannot rely on the arms licence in their favour in view of Schedule III Form III Condition 5 of Arms licence which reads as under :

5. The licensee or any retainer acting under this licence shall not carry any arms covered thereby otherwise than in a good faith for the purpose of sport/ protection/ display; and save where he is specially authorised in this behalf by the District Magistrate concerned, he shall not take any such arms to a fair, religious procession or other public assemblage or within the campus of precincts of any educational institution."

4. According to the learned A.P.P., licensed rifle cannot be used for even display as per this condition, and

violation of the condition would attract Section 30 of the Arms Act, 1959. Thus, according to the learned A.P.P., apart from the notification under section 37 of the Bombay Police Act or permission given to the Sachkhand Gurudwara, the applicants would still be liable to be proceeded against under Section 30 of the Arms Act, 1959.

5. Having gone through the rival contentions and claims, we have examined the F.I.R., copy of which is filed at Annexure A. Looking to the submissions made and material before us, we find that case is made out for registration of the offence. Relaxation in Notification Annexure D relates to permitting functions like marriage, religious function and specially permitted processions etc. It cannot be read as permit to carry arms, explosives or to make provocative speeches etc. (which were prohibited in paras A to F) in the marriage, religious function, procession etc. The paragraph itself, further makes it clear as to what procession etc. and on what conditions to permit would require orders of Police officials as stated.

It would not be appropriate at this stage to interfere in the investigation. There is no substance in the

application. The same stands rejected.

6. Our observations shall be treated as preliminary,
looking to the stage of the matter.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)

fmp/cr664.14